IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1101 of 1992

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SUDHIRFHANDRA B. JOSHI - Appellant(s)
Versus
ISHWARBHAI NATHABHAI PATEL & 3 - Opponent(s)

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Appearance :
MR PRANAV G DESAI for Appellant(s) : 1,
MR BS PATEL for Opponent(s) : 1 - 2.
MRS RANJAN B PATEL for Opponent(s) : 1 - 2.
NOTICE SERVED for Opponent(s) : 3,
MR SP HASURKAR, APP, for Opponent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 01/10/2007

ORAL JUDGMENT

1. The present appeal is directed against the judgement and order dated 2nd April 1991 passed by the learned

Judicial Magistrate, First Class (Municipal), Baroda, in Criminal Complaint No.1489 of 1982, whereby the respondents-accused were acquitted of the offences alleged against them.

2. The prosecution case, in short, is to the effect that the Food Inspector had purchased chilly powder from the shop of the applicant on 11.1.1982 and sent the same for test to Public Analyser. Upon the inspection it was alleged that the sample was found to be adulterated and therefore a complaint came to be filed against the respondent nos.1 to 3 for the alleged commission of offences publishable under sections 7 and 16 of Prevention of Food Adulteration Act.

3. The case was numbered as Criminal Case No.339 of 1991. After recording necessary evidence, the learned Magistrate acquitted the respondents of the offences with which they were charged. It is against the aforesaid judgement and order the present appeal has been filed.

4. Learned Advocate appearing for appellant submitted that the trial court has committed an error in

acquitting the accused. He submitted that the sample in question was made in accordance with the rules and regulations in presence of panchas. The sample was found to be adulterated and therefore, the learned Judge ought not to have acquitted the accused. He further submitted that the prosecution has succeded in establishing the charges against the accused and therefore the learned Magistrate has committed an error in acquitting them.

5. Mr. B.S. Patel, learned Advocate appearing for the respondents-accused submitted that the learned Magistrate has considered all the aspects and evidence on record and did not find sufficient evidence to convict the respondent and therefore this Court may not interfere with the impugned judgement and order.

6. At the outset it is required to be noted that the scope and power of the appellate court to interfere in appeal against acquittal is now well settled. In the case of State of Goa Vs. Sanjay Thakran, reported in (2007)3 SCC 755, the Apex Court held that the appellate court can review

the evidence and interfere with the order of acquittal only if the approach of lower court is vitiated by some manifest illegality or the decision is perverse and the court has committed a manifest error of law and ignored the material evidence on record. Para 16 of the said decision reads as under:

> “16. From the aforesaid decisions, it is apparent that while exercising the powers in appeal against the order of acquittal the court of appeal would not ordinarily interfere with the order of acquittal unless the approach of the lower court is vitiated by some manifest illegality and the conclusion arrived at would not be arrived at by any reasonable person and, therefore, the decision is to be characterized as perverse. Merely because two views are possible, the court of appeal would not take the view which would upset the judgement delivered by the Court below. However,the appellate court has a power to review the evidence if it is of the view that the view arrived at by the court below is perverse and the court has committed a manifest error of law and ignored the material evidence on record. A duty is cast upon the appellate court, in such circumstances, to reappreciate the evidence to arrive at a just decision on the basis of material placed on record to find out whether any of the accused is connected with commission of the crime he is charged with.

7. I have heard learned Advocates for the respective parties. As a result of hearing and perusal of the record it

is found from the record that the trial court found that in the consent order no reason was mentioned for filing the complaint and the provisions under which the complaint is to be filed are also not stated. Therefore, there was no prima facie case against the respondents-accused.

8. In the case of Ramesh Ganpatrao Bendbar Vs. Jivanlal Mangaldas Shah, reported in 2005(2) GLH 89 it is held that Local Health Authority is not required to give detailed reasons for grant of consent. Consent can be said to be accorded after application of mind, if it is apparent from the contents of the consent that proper material has been taken into consideration and the Authority is satisfied that provisions of the Act are violated. In the present case there is nothing on record to show that the authority has applied their mind before giving the consent. I am, therefore, in complete agreement with the reasonings adopted and findings arrived at by the trial court. There is nothing on record to show that the approach of the trial court is vitiated by some manifest illegality or the decision is perverse and the court has committed a manifest error of law and ignored the material evidence on record. I am in complete agreement with the reasonings adopted and findings arrived at by the Trial court. However, I am not discussing the evidence of each witness in detail in view of the observations made by the Apex Court in the case of State of Karnataka Vs. Hemareddy, reported in AIR 1981 SC 1417 wherein it is held as under:

> "... This court has observed in Girija Nandini Devi V. Bigendra Nandini Chaudhary (1967)1 SCR 93: (AIR 1967 SC 1124) that it is not the duty of the appellate court when it agrees with the view of the trial court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice."

9. In the premises aforesaid, the appeal is required to be dismissed and is accordingly dismissed. R & P, if lying in this Court, shall be sent back forthwith.

[K.S. JHAVERI, J.]